

REMARKS

Claims 1-14 are pending. The rejections presented in the prior Office Action under Section 112 have been withdrawn. However, all of the claims have been finally rejected on the same prior art applied in the prior Office action. Reconsideration is requested in view of the following remarks.

I. The Rejection of Claim 1 under Section 103 Must Be Withdrawn Because It Is Based On An Error.

Claim 1 stands rejected over Papadopoulos '454 (U.S. 6,282,454) in view of Mori '392 (U.S. 5,103,392) under Section 103. Claim 1, directed to a process control system, requires, among other features:

“a processor unit adapted to determine a payment figure from operations running in the process control system ...”

The Examiner has conceded that the '454 reference does not teach a processor adapted to determine a payment figure. However, the rejection still assumes that the Mori reference “teaches a processor adapted to determine a payment figure ...” as stated at page 2 of the Final Office Action.

The rejection is in error, apparently due to either a misunderstanding or an incorrect interpretation that was applied to the claim language “adapted to determine” as evidenced at page 10 of the Final Office Action. See Paragraph number 8 therein which characterizes the Mori reference as including a program storage unit which can be “adapted to” be used by proprietors to determine the payment figure based on the “system” stored information.

It has already been argued that what the Examiner has referred to is not that which is claimed. Now, however, with the Examiner's added explanation, applicants understand that the Examiner misinterprets the claim language “adapted to determine” as though it might mean that subject matter not being positively claimed by the applicants might determine the payment figure, i.e., outside the scope of the claim. See Paragraphs 9 and 10 at pages 10-11 of the Final

Office Action which state in part:

the processor is only “adapted to” determine a payment figure, in fact, “proprietors obtain information provided by a computer for charging the user the exact amount of use of his program” can be read as “a processor unit adapted to determine a payment figure ...”

Applicants strongly disagree because this is entirely incorrect. The Examiner’s argument misinterprets the claim language **as though it reads** that the processor is merely adapted to operate with proprietors who perform the claimed function, e.g., obtain information provided by a computer and perform a charging function separate and apart from that computer for charging the user. This is not consistent with the plain meaning of claim 1.

There is no basis for interpreting the language

“processor unit adapted to determine a payment figure”

as anything other than a processor unit which is configured to perform the function of determining a payment figure. This is not the same as a situation wherein operators acquire information from a computer to determine a user charge separate and apart from the computer functions.

Furthermore, there is no basis to contend that the claimed processor unit is not required to perform the very function ascribed to it. There is no support for arguing that the quoted claim language in its entirety can be read upon anything outside of a processor unit, i.e., it cannot be read upon operators such that it would be considered “adapted to operate with” external activities to perform the very function which applicant require that the processor unit itself must perform.

Applicants acknowledge that in certain contexts the phrase “adapted to” might mean that a claim element is adapted to operate in conjunction with (or be coupled to) a second component, which is not claimed, e.g., wherein the second component is relied upon to perform an express function. However, in claim 1, this is not the case. Rather, the claim requires that the claim element **itself** (i.e., the processor unit) be adapted, e.g., configured, to perform the recited function.

The Mori reference is concerned with providing history of use so that proprietors “can charge for the exact amount of use ...” (see col. 1, lines 15 – 18), but the reference does not disclose or suggest a system to “determine” a payment figure. Providing a history of use is not a disclosure or suggestion of providing a payment figure.

To support applicants' continued traversal of the rejection on the basis of this deficiency, reference is made to col. 3, lines 29-31 of Mori which state that "the proprietor can obtain information necessary for charging the user the exact amount of use of his program." So, at best, the cited passage implies that the proprietor is provided with information enabling the proprietor to calculate a payment figure. The passage does not suggest that the system of Mori would determine a payment figure.

See, also, col. 3, lines 63-68 which clarify what is meant at col. 3, lines 44-46 concerning "storing data of the charge payable by the user ..." That is, lines 65-68 clearly indicate that an account portion 53 is connected to an input/output portion 132 so that information of the charge payable by the user can be stored in the use history 131, e.g., a predetermined limit on the amount of cumulative charges of a user. In this regard it is important to note that the proprietors are **not** part of the system disclosed by Mori. Rather, as indicated at col. 4, lines 20-30, the proprietors "register their programs ... [and] obtain accounts of the use of their programs ..." The description at col. 3, lines 63-68 and the input/output lines of figure 2 may imply that it is possible for the proprietors to input information into the history storage 13 such as a predetermined limit on the amount of cumulative charges of a user. Given this explanation, there is no support for contending that the system of Mori would determine a payment figure. For similar or identical reasons, the rejection of claim 14 is also deficient.

Based on the foregoing it cannot be concluded that the system of Mori determines any payment figure. Rather, the system only provides information on history of use to the proprietors who are then enabled to charge appropriately for the use.

In summary, the art rejection has failed to address the express language of the claims and find the claimed subject matter in the prior art. To sustain a rejection under Section 103 it is necessary to find every claimed feature in the same detail as recited in the claims. The deficiencies present in Mori reference preclude such a finding and the rejection must therefore be withdrawn. For these reasons, the reliance upon Mori in combination with Papadopoulos is insufficient basis to reject claim 1 and each claim which depends therefrom.

In summary, the rejection of claim 1 relies on an unduly broad interpretation of the claimed subject matter based on the Examiner's misunderstanding or misapplication of the phrase "adapted to determine" as illustrated by the statement at paragraph 10 of the Final Office Action. An incorrect interpretation is given to "adapted to" in order to argue that applicants' processor is

only adapted to determine a payment figure. In fact, being adapted to perform this function means that the processor is configured accordingly. This claim requirement cannot be read upon prior art knowledge that “proprietors” might obtain the underlying information provided by a computer in order to determine a payment figure separate and apart from the computer. It is only the applicants who teach

“a processor unit adapted to determine a payment figure from operations running in the process control system ...”

Allowance of claim 1 is requested.

II. The Rejection of Claim 14 under Section 103 Must Be Withdrawn Because It Is Also Based On Error Relating to Deficiencies in the Mori Reference.

Claim 14 stands rejected under Section 103 over Papadopoulos ‘454 (U.S. 6,282,454) in view of Mori ‘392 (U.S. 5,103,392) and further in view of Baker (U.S. 7,035,898). Claim 14, directed to a method for determining a payment figure in a process control system, requires, among other features:

“determining a payment figure by the processor unit using recorded data of the preceding steps.”

The rejection clearly lacks support for finding this feature in the prior art. This is clear from the above discussion regarding the incorrect application of Mori to reject claim 1. That is, with respect to the rejection of claim 1, page 11 of the Final Office Action already acknowledges that the Examiner has had to rely upon a construction of the phrase “adapted to determine a payment figure” in order to read the subject matter of claim 1 on Mori. Here, in the case of claim 14, the pertinent claim language

“determining a payment figure by the processor unit ...”

does not even incorporate a phrase such as “adapted to” and so there is even less of a basis to rely on Mori.

Still, in rejecting claim 14, the Final Office Action disregards the same deficiency acknowledged in the Mori reference (relative to claim 1) and incorrectly contends that Mori does teach “determining a payment figure by the processor unit ...” See page 7 of the Final Office Action. In attempting to support this rejection, it is stated at page 7 of the Final Office Action:

“By storage of the history of use, proprietors of marketable programs can charge for the exact amount of use of the software. Specifically, the system allows proprietors to obtain information on the exact state of use of software by a specific user and charge appropriately for that use, Col. 1, lines 14 – 23 ...”

Applicants traverse this position and have already urged that this is not what is claimed. Applicants do not d with this characterization of the Mori reference, and again ask the Examiner to acknowledge that **this is not what is claimed**. In fact, the system disclosed in the Mori reference cannot be read upon applicants’ claimed subject matter. It is only by misinterpreting the express claim language that the rejection has been sustained in the Final Office Action.

III. Conclusion and Request for Supervisory Review

For all of the foregoing reasons, it is respectfully submitted that the rejections set forth in the Final Office Action are not properly grounded and it is incumbent upon the Examiner to remove the rejections and allow the application. Otherwise the Examiner will force the applicants to yet again appeal the Examiner’s decision. The Examiner has never presented a clear and proper basis for rejecting the claims.

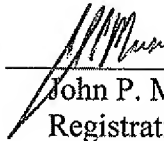
In this regard, MPEP §707.02 requires that the supervisory patent examiner impress upon the examiner the fact that the shortest path to the final disposition of an application is by finding the best references on the **first** search and **carefully** applying them. That section also requires the supervisory patent examiner to personally check on the pendency of every application which is up for the third or subsequent Office action with a view to finally concluding its prosecution. For this reason the applicants request that the Examiner seek supervisory review of the argument presented prior to issuing an advisory action. Applicants do not wish to embark upon a second unnecessary appeal at the expense of both the Patent Office and the assignee.

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The Commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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By: 
John P. Musone
Registration No. 44,961
(407) 736-6449

Siemens Corporation
Intellectual Property Department
170 Wood Avenue South
Iselin, New Jersey 08830